IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 157 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHAILESHKUMAR RATILAL SHAH

Versus

DISTRICT MAGISTRATE BANASKANTHA

Appearance:

1. Special Civil Application No. 157 of 2002

MRS BANNA DATTA for MR AR SHAIKH for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 04/02/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 14th Sept., 2001 passed by the District Magistrate, Banaskantha at Palanpur in exercise of power under Section 3 of the PASA Act.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered three registered offences against the detenu. The detaining authority has also considered statements of two anonymous witnesses recorded on 7.8.2001, which were verified by the Dy. S.P. on 12.8.2001 and passed the order on 14th Sept., 2001.

3. The detaining authority observed that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

4. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India on various grounds. The learned Advocate for the petitioner Ms. Banna Datta for Mr.Shaikh submitted that the order stands vitiated only on the ground that the satisfaction recorded by the detaining authority for urgent need for detention is not genuine. To support her version, she submitted that the statement of witnesses were recorded on 7.8.2001, whereas they were verified on 12.8.2001 and the order was passed on 14th Sept., 2001 i.e. after one month and two days. If the satisfaction for the urgent detention was genuine, the order would have been passed immediately and therefore the order may be quashed.

5. Learned AGP Mr. D.P.Joshi has opposed to this petition.

6. Having regard to the contention raised before this Court, the grounds of detention indicate that the detaining authority observed that the detenu is a boot-legger and his activity results in disturbance to public health and public order, action against him under ordinary law will have no effect on him, that it is not possible to prevent him from pursuing his activities by taking action under ordinary law and therefore, he is required to be immediately detained under PASA. This subjective satisfaction does not appear to be genuine for the reason that the detaining authority had before him the proposal atleast before 7.8.2001, Dy. Supdt. of Police had verified the statement on 12.8.2001 and thereafter order is passed only on 14th Sept., 2001. If the satisfaction recorded by the authority was really

genuine, the action would have been taken much earlier and order would have been passed earlier. The satisfaction therefore is not genuine in law. The order of detention therefore stands vitiated. The petition deserves to be allowed only on this count.

7. The petition is therefore, allowed. Order of detention dated 14th Sept., 2001 passed by the District Magistrate, Banaskantha at Palanpur is quashed and set aside. Detenu Shaileshkumar Ratilal Shah be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas